



AGREEMENT FOR DESIGN AND PAINTING OF ART WORK FOR THE SAN PEDRO WATERFRONT ARTS DISTRICT PUBLIC ART PROJECT

Agreement by and between the San Pedro Waterfront Arts District and Luis Sanchez

This agreement for professional design and painting services ("Agreement") is made and entered into this 23rd day of September, 2016, by and between the **Arts District San Pedro Waterfront** ("Arts District") and **Luis Sanchez** ("Artist").

WHEREAS, the Arts District seeks to implement a public art project comprised of a **painted wall mural** along located on the entire west facing wall of 454 W. 6th Street, San Pedro, CA, 90731, which is also the west facing wall of the Lilyan Fierman Walkway, known as the Lilyan Fierman Walkway Public Art Project. "The Project;"

WHEREAS the Artist represents himself as possessing the necessary skills and qualifications to complete this Project;

WHEREAS, pursuant to the City of Los Angeles' Mural Ordinance #182706 and the Los Angeles Department of Cultural Affairs Professional Service Agreement # C-127455, the Arts District and the City of Los Angeles have allocated funds for the design and execution of the Project; and

WHEREAS, pursuant to the requirements of the Mural Ordinance, a Design Advisory Selection Panel was established to review artists' submittals to an open Request for Proposals and make recommendations to the Arts District on the commissioning of Art Work for the Project; and

WHEREAS, the Artist was recommended by the Design Advisory Panel, Arts District Board and the Property Owner;

WHEREAS, on August 22, 2016, the Arts District approved the Design Advisory Panel's recommendation; and

WHEREAS, on August 22, 2016, the Arts District authorized its Managing Director to enter into an Agreement with the Artist to design and paint a wall mural for the Lilyan Fierman Walkway Public Art Project;

NOW, THEREFORE, the City and the Artist, for the consideration and under the conditions hereinafter set forth, agree as follows:

TERMS OF AGREEMENT

I. Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth:

I.1. "Artist" shall mean **Luis Sanchez**

- I.2. "Art Work" shall mean the Art Work by the Artist for the Project Site, as described in Exhibit A and as approved by the Arts District. Art Work may be used interchangeably with "Project."
- I.3. "Project Manager" shall mean **Linda Grimes**, Managing Director of the San Pedro Waterfront Arts District.
- I.4. "Project Site" shall mean the approved location for the installation of the Art Work, as described in Exhibit B.
- I.5. "Project Management Team" shall mean a team led by the Project Manager and comprised of the Arts District Board, the Design Advisory Panel, the LA Department of Cultural Affairs, Public Art Program, the Property Owner and selected members of the community supporting aspects of the project.
- I.6. "Final Execution Date" shall mean no later than **February 28th, 2017**.
- I.7. Whenever the words "as directed", "as required", "as permitted", or words of like effect are used, it shall be understood as the direction, requirement, or permission of the Arts District.
- I.8. The words "sufficient", "necessary", or "proper", and the like, mean sufficient, necessary or proper in the judgment of the Arts District and the words "approval", "acceptable", "satisfactory", or words of like import, shall mean approved by, or acceptable to, or satisfactory to the Arts District, unless otherwise indicated by the context.

2. Term of the Agreement

The term ("Term") of this Agreement shall commence upon execution of this Agreement by the Arts District and be completed by the Final Execution Date, or the Final Acceptance of the Art Work by the Arts District as described in Section 5.4, whichever is earlier.

3. Services Artist Agrees to Perform

3.1 Services of Artist. The Artist agrees to design and paint the Art Work at the Project Site and as more specifically set forth in Exhibit A, which is attached and incorporated into this Agreement.

The Artist will be responsible for: (a) providing the Arts District with the proposed design concepts for review and selection, (b) providing the Arts District with final designs for approval; (c) executing and installing the Art Work by the Final Execution Date, (d) consulting the Arts District on the Art Work, and (e) providing reports, documentation and description of maintenance requirements of Art Work. Artist's completed work must cover the entire wall, measuring about 101 feet wide by 18 feet high.

4. Timely Provision of Services

The Artist agrees to the following schedule of deliverables. Arts District may, in its discretion, notify Artist in writing of changes in the following schedule:

4.1 **Community Meetings – Completion by November 2016.** Artist, in concert with the Arts District shall convene at least two (2) meetings with community members to notify the community and to obtain input on the Art Works' final design program. The proposed content and materials to be used in connection with advertising for such community meeting(s), as well as proposed agenda shall be reviewed and approved by the Project Manager.

4.2 Final Design – Submittal by October 1st, 2016. Artist shall submit the Final Design of the Art Work to the Project Manager. Final Design materials shall include:

- 1) To-scale working drawings for all components of the Art work;
- 2) Samples of paint to be used indicative of color;
- 3) A scaled site plan showing the revised and accurate site placement of the Art Work;
- 4) Project Budget showing current cost estimates of fabrication and materials;
- 5) A detailed time line explaining the work to be done, with an estimated completion date;
- 6) Written specifications and recommendations for maintenance of the Art Work for five years from the date of completion of the Project.

Final Design shall be reviewed and approved by the Project Management Team. Written approval of the Final Design will be forwarded to the Artist by the Arts District City within five (5) business days, via email.

4.3 Fabrication - Completion within sixty days after Final Approval Date, but no later than February 28, 2017.

(a) Artist will paint the Art Work in accordance with the Final Design approved by Arts District for the design of the Art Work.

(b) Artist shall give Project Manager one (1) week notice of the dates of the following milestones for the painting of the Art Work: 35% complete, 45% complete, and 20% complete.

(c) The Arts District will review and approve the Art Work at each milestone and will determine, in its sole reasonable discretion, that it meets all of the Specifications previously approved by the Arts District and that no default by Artist hereunder has occurred and is continuing.

(d) Prior to commencement of painting the Art Work, Artist will coordinate with Project Manager to survey the site, set the limit of work, determine staging and storage requirements, and establish delivery and installation methods and schedules.

(e) Prior to commencement of painting the Art Work, Artist will submit a complete Implementation Plan for the painting of the Art Work to the Project Manager, to be included in this contract as an addendum, not later than October 1st, 2016. The plan will include delivery and installation dates and methodologies, a list of equipment and materials to be used, staging and storage needs, and a list of subcontractors and equipment to be used on the site.

(f) Artist will be responsible for the labor, material, and equipment necessary to load and paint the Art Work on the site. Artist will paint the Art Work in accordance with the approved Implementation Plan.

(g) At least three business days prior to commencement of painting the Art Work, the Artist must contact the Project Manager for approval to begin installation at the Project Site. The Project Manager or other Arts District staff must be present at the Project Site on the first day of installation.

(h) Artist shall contact Project Manager upon completion of the painting of the Art Work for review and approval by the Project Management Team.

5. Approval Process

5.1. Generally. If the Arts District in its sole and reasonable discretion determines to withhold any approval of any element as specified below, the Arts District shall have the right to immediately terminate this Agreement and shall have no further obligations under this Agreement.

5.2. Final Design. The Artist shall submit the Final Design to the Project Manager for written approval by the Project Manager as indicated in Section 4.2, prior to commencement of the Project.

5.3. Implementation of the Art Work: The Artist shall consult with the Project Manager prior to and as appropriate during the painting of the Art Work, as indicated in Sections 4.3 and 4.4. The installed Art Work shall be reviewed by the Project Management Team prior to final acceptance of the Art Work by the Arts District.

5.4. Conditions to Final Acceptance: The completed Art Work shall not be deemed to have been accepted by the Arts District until each of the following conditions have been fulfilled, as determined by the Arts District:

(a) All approvals and City of LA Permits required under Sections 5.2, 5.3, and 5.4 shall have been obtained by Artist; and

(b) The installation of the Art Work shall conform to the specifications for the Art Work approved by Arts District pursuant to Section 5.3 above; and

(c) The Art Work shall have been installed on a timely basis;

(e) The Art Work shall be in substantial compliance with all other terms and conditions contained in this Agreement.

(f) Artist has provided Arts District with a Documentation and Final Maintenance Plan addressing the following elements:

i. A written report for the Arts District's files including complete information regarding the intent of the Art Work and the scale, materials, and processes used in the painting and installation of the Art Work.

ii. Final written specifications and recommendations for maintenance of the Art Work. One (1) set of digital images provided on CD or jpeg file.

An informational, painted or sticker attribution section approximately 12"x12" which credits the Arts District, the Artist and the City of LA shall advise the Project Manager in writing when these conditions have all been met. The Project Manager shall notify Artist in writing of final acceptance or of the deficiencies in meeting the conditions for final acceptance.

6. Consultation during Design and Implementation of Art Work; Deviation from Approved Specifications

6.1. Consultation. Artist hereby acknowledges that the goal of the parties to this Agreement is the installation of a work of art that best represents the creative talents of Artist and conforms to the requirements of the Arts District. To those ends, Artist agrees to be available as reasonably required for consultation with the Project Manager on the design and implementation of the Art Work, at no additional cost to the Arts District. Artist shall also commit to attend any inauguration or presentation ceremonies and/or public relation events.

6.2. Deviations from Approved Specifications. Artist shall fabricate and install the Art Work in strict conformity with the specifications and designs approved by the Arts District pursuant to Section 5 above. However, Artist may at any time make a request of the Arts District for its approval of a deviation from the approved specifications. All such requests must be made in reasonable specificity and with reasonable advance notice to provide the Arts District with sufficient information and time to make an informed and considered decision. The Arts District reserves the right to bring such requests to the Project Manager for approval by the Project Management Team. In no event shall any deviation increase the project scope and/or budget without prior Arts District approval. The Arts District may withhold approval to any such requested deviation.

7. Preparation of and Access to Site/Notice of Conflicting Conditions

7.1. The preparation of the Site shall be the responsibility of the Artist, for wall preparation. Artist shall not commence implementation until access to the Site has been approved and scheduled

7.2. Where the Artist's work is associated with that of any other contractor, the Artist shall examine the adjacent work and report in writing to the Project Manager any visible defect or condition preventing the proper execution of Artist's contract. If Artist proceeds without giving notice, the Artist shall be held to have accepted the work or material and the existing conditions, and shall be responsible for any defects in its own work consequent thereon, and shall not be relieved of any obligation or any guarantee because of any such condition or imperfection.

7.3. Artist shall not be entitled to any damages for delays in the completion or acceptance of the work due to any actions of the Arts District, its consultants or contractors. Artist shall bear any storage costs for the Art Work, materials or supplies, unless Arts District delays completion of the Art Work beyond the Final Execution Date for its own convenience and unrelated to any delays caused by Artist.

8. Compensation

8.1. Contract Amount: The total contract amount is **(\$32,000)** for all services associated with the implementation and completion of the Project under this Agreement, including but not limited to payment to all suppliers and subcontractors, rental and purchase of all materials and equipment, wall preparation and graffiti coating, all related travel costs, all mailing and shipping charges, all parking costs, parking tickets, as well as payment of all supplies, fees, taxes, City of LA business license, permits, all required forms of insurance, transportation to and from meetings, site preparation, restoring site to prior condition, and all other expenses associated with the scope of work specified in this Agreement.

No charges shall be incurred under this Agreement nor shall any payments become due to Artist until all reports and services, or both, required under this Agreement are received from Artist and approved by the Arts District as being in accordance with this Agreement, and the Artist provides detailed invoices, with receipts, for all expenses incurred or to be incurred in relation to the work associated with each payment installment, including Artist's fee. The Artist will be paid only for costs demonstrably related to the work for each phase. The final payment of the fee is due and payable when the Art Work is accepted by the Arts District and a final invoice is submitted by the Artist.

In no event shall the Arts District be liable for interest or late charges for any late payments.

8.2. Interim Payments: The Arts District agrees to make interim payments to the Artist according to the schedule and conditions set forth below:

Payment #1: 35% - \$10,500.00

Purpose: Advance on design development.
Submittals: Mutual execution of the Agreement; Invoice for Payment #1. Prior to payment, Artist must submit to Arts District proof of insurance, City of LA permit, Project Timeline and active City of Los Angeles Business License.

Payment #2: 45% - \$14, 500.00
Purpose: Completion of Final Design Submittals, Wall Preparation and Advance on Materials Cost for Fabrication of Art Work (Section 4.2).
Submittals: Final Design Submittals as provided in Section 4.2; Invoice for Payment #2.
Approvals: Arts District Project Management Team

8.3 Final Payment: The Arts District agrees to make the final payment to the Artist according to the conditions set forth below:

Final Payment: 20% - \$7, 000
Purpose: Final Acceptance of Art Work (Section 5.4).
Submittals: Written notification to Project Manager of fulfillment of requirements of Section 5.4; Application of Graffiti Coating; Invoice for Final Payment.
Approvals: Arts District Project Management Team

8.4. Effect of Interim Payments: Interim payments do not constitute acceptance or approval of the final work by the Arts District; nor shall it be construed as a waiver of the Arts District's right to require that the work conform strictly to the Final Design as approved by the Arts District, as specified under Section 5.3.

8.5. Refund of Interim Payments. In the event this Agreement is terminated for any reason prior to Arts District's final payment to Artist, Artist shall immediately refund to Arts District any interim payment made to Artist, the amount of which has not been previously spent by Artist as evidenced by appropriate invoices or receipts to cover costs and expenses approved by the Arts District.

9. Method of Payment; Audit and Records

Invoices furnished by the Artist under this Agreement must be in a form acceptable to the Arts District's Treasurer. Payment shall be made within forty-five (45) days after approval of the invoice by staff.

At any time during normal business hours and as often as the Arts District may deem necessary, there shall be made available to the Arts District for examination all records with respect to all matters covered by this Agreement. The Artist will permit the Arts District to audit, examine, and make excerpts or transcripts from such records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Agreement.

10. Taxes

Any taxes levied upon this Agreement, the transaction, or the equipment or services delivered under this Agreement, including sales or use taxes shall be borne by the Artist.

11. Liability for Damage to Equipment or Art Work

The Arts District shall bear no responsibility, nor incur any liability, for loss or damage to the Art Work or any Artist-owned equipment involved in Artist's performance under this Agreement.

12. Independent Contractor

Artist shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which the Artist performs the service required by the terms of this Agreement. Nothing contained herein shall be construed as creating an employment or Arts District relationship between the Arts District and the Artist. Terms in this Agreement referring to direction from the Arts District shall be construed as providing for direction as to policy and result of the Artist's work only and not as to the means by which such a result is obtained.

Artist is solely responsible for hiring and paying subcontractors and employees, as well as responsible for the acts of these subcontractors and employees.

13. Artist Warranties

13.1. Conformance with Plans and Specifications. Artist hereby expressly warrants to the Arts District that the Art Work, and all services and materials incorporated therein, shall conform to all plans and specifications of the Art Work approved by the Arts District. The Art Work shall be subject to inspection and rejection with due cause by the Arts District from the beginning of fabrication until the final completion and acceptance. An inspection by the Arts District of any work or material shall not be deemed to be a waiver of any future right of inspection or of any right to demand correction of any subsequently discovered defect. Any work or material found to be unsatisfactory or defective before final approval of the work shall be corrected or replaced by the Artist prior to expiration of this contract. Inspection shall not relieve the Artist of the Artist's obligation to furnish materials and workmanship reasonably in accordance with the contract.

13.2. Defects in Material and Workmanship. Artist warrants that the work will be fit for the intended purpose; will be safe and will not have any nuisance or harmful effect; and will be free of defects in workmanship or materials, including inherent defects. Artist warrants that it shall, at Artist's cost and expense, remedy such defects in workmanship or materials that appear within twenty-four (24) months of the Completion of Execution of the Art Work.

In the event the Art Work should deteriorate due to an inherent defect during the Installation Period, the Artist will replace the work at Artist's expense. "Inherent defect" refers to a quality within the material or materials which comprise the Art Work which, either alone or in combination, results in the tendency of the work to destroy itself. "Inherent defect" does not include any tendency to deteriorate which is specifically identified in the proposal submitted by the Artist.

13.3. Title. The Artist represents and warrants that: (a) the Art Work is solely the result of the artistic effort of the Artist; (b) the Art Work is unique and original and does not infringe upon any copyright and (c) the Art Work will not be reproduced on any other mural project.

14. Maintenance, Repairs, Alterations and Removal

14.1. Maintenance and Repair. As a condition to final acceptance by the Arts District of the Art Work, the Artist shall provide the Arts District with a materials list, the manufacturer's technical sheets and/or specifications for the materials, and a written description of the regular maintenance needs of the Art Work. Routine maintenance of the Art Work shall be the responsibility of the Artist and a Maintenance Schedule will be part of the Artist's final report. The Artist will be available for consultation on maintenance and repair during the Installation period. If necessary maintenance and repairs cannot be made in accordance with the Artist's specifications, or if the Artist has provided insufficient information to the Arts District, the Arts District may use its best judgment to effect necessary repairs in a timely fashion.

As Artist completes installation of the Art Work, but before Final Acceptance of the Art Work, Artist shall notify the Project Manager of completion of and provide the Project Manager with photographs of the Art Work. The Project Manager shall inspect the Art Work and verify completion.

14.2. Removal or Destruction. Artist hereby acknowledges that the Art Work, when installed, will be incorporated within and made a part of the Project Site in such a way that removing the Art Work from the Project Site, or the destruction or modification of the Project Site may cause the destruction, distortion, mutilation or other modification of the Art Work. Artist therefore agrees that the Arts District shall have the absolute right incidental to its ownership of the Art Work to remove, relocate, move, replace, transport, or transfer, in whole or in part (such actions being referred to herein as "Alterations"), the Art Work at such time as the Arts District shall deem necessary in order to exercise its powers and responsibilities with respect to public works and improvements in furtherance of Arts District operations. The Arts District shall make a good faith effort to provide the Artist with prior written notice of the Arts District's intent to undertake any Alterations to the Art Work. To the extent the provisions of this Section are inconsistent with the provisions of federal or state law, including without limitation the California Art Preservation Act (California Civil Code Sections 980 et seq.) and the 1990 Visual Artists' Rights Act, Artist hereby waives any right to preservation of the Art Work provided by those laws; provided, however, that the Artist shall retain any right to disclaim authorship of the Art Work pursuant to and under the conditions set forth in the California Art Preservation Act, the City of LA's Mural Ordinance #182706 and the 1990 Visual Artists' Rights Act.

14.3. Public Hazard. Artist warrants to the Arts District that the Art Work as installed does not contain features, materials or elements that pose a foreseeable danger to the public. In the event that the Arts District determines that the Art Work presents an imminent hazard to the public, the Arts District may authorize the removal of the Art Work without approval of the Artist. The Artist shall be notified within ten (10) days of any such action, and the Arts District shall then consider options for the final disposition, repair, reinstallation, maintenance or deaccession of the Art Work. In the event that the Art Work can not be removed without being irreparably damaged or destroyed, the Artist hereby agrees to waive any rights the Artist may have under the California Art Preservation Act and the 1990 Visual Artists' Act, provided, however, that the Artist shall retain any right to disclaim authorship of the Art work pursuant to and under the conditions set forth in the California Art Preservation Act and the 1990 Visual Artists' Rights Act.

14.4. Artist's Address. The Artist shall notify the City of any change in both his physical and email address. Failure to do so shall be deemed a waiver by Artist of any rights to approval under this Section 14.

15. Insurance

15.1. Required Insurance. Artist shall place and maintain for the periods stated below, and pay the cost thereof, the following insurance policies:

(a) Worker's Compensation. If Artist has employees, Artist shall procure and maintain statutory Worker's Compensation Insurance in the jurisdiction where the work is being performed and provide a waiver of subrogation against the Arts District and the City of LA. Artist shall also procure and maintain Employer's Liability Insurance with a limit of no less than \$1,000,000 each accident, covering all employees. If Artist warrants that it is not an employer and has no employees as defined by the California Labor Codes Sections 3351-3351.5, then the Arts District waives the requirement for Worker's Compensation and Employer's Liability Insurance under this Agreement.

Artist shall ensure that Artist's subcontractors who do qualify as employers as defined by the California Labor Code Sections 3351-3351.5 procure prior Worker's Compensation, with Employer's Liability insurance, with limits of no less than \$1 million each accident, covering all employees employed by Artist's subcontractor to provide statutory benefits as required by the laws of California, said policy shall be endorsed to provide that the insurer waives all rights of subrogation against the Arts District.

(b) General Liability Insurance. Artist shall procure and maintain Comprehensive General Liability Insurance with limits not less than \$1,000,000 for each occurrence combined single limit for bodily injury and property damage, including coverage for contractual liability, broad form property damage, completed cooperation's, and if any subcontracted work, independent contractors.

(c) Comprehensive Automobile Insurance. Artist shall procure and maintain, and cause any subcontractors to procure, Comprehensive Automobile Liability insurance with single limit for bodily injury and property damage of \$1,000,000, including coverage for owned, non-owned and hired automobiles, as applicable. Any deductible under such policy shall not exceed \$1,000 for each occurrence.

(d) During the term of this Contract and without limiting Artist's indemnification of the Arts District or the City of Los Angeles, Artist shall provide and maintain at its own expense a program of insurance having the coverages and limits customarily carried and actually arranged by the Artist, but not less than the amounts and types listed on the Required Insurance and Minimum Limits sheet (Form General 146 in Exhibit I of Professional Services Agreement #C-127455), covering its operations hereunder. Such insurance shall conform to the City Of Los Angeles' requirements established by Charter, ordinance or policy, shall comply with the Insurance Contractual Requirements (Form General 133 in Exhibit E hereto of Professional Services Agreement #C-127455) and shall otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management.

Artist shall comply with all Insurance Contractual Requirements shown on Exhibit E hereto. Exhibit I is hereby incorporated by reference and made a part of this Contract.

15.2. Miscellaneous Insurance Matters.

15.2.1. All insurance policies obtained pursuant to this Section shall be endorsed to provide:

(a) That thirty (30) days written notice of cancellation, non-renewal or reduction in coverage or limits shall be given to the Project Manager/Managing Director of the San Pedro Waterfront Arts District at 880 West 18th Street, San Pedro CA., 90731; and

(b) That such insurance is primary to any other insurance available to an additional insured with respect to claims arising out of this Agreement and that insurance applies separately to each insured against whom a claim is made or a suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limits of liability.

15.2.2. All insurance policies required under this Agreement shall be issued by insurance companies reasonably acceptable to the Arts District and shall be admitted to do business in the State of California.

15.2.3. The liability insurance policies required above shall be endorsed to name as an additional insured the Arts District and the City of Los Angeles and its respective members, officers, directors, agents and employees.

15.2.4. Copies of all insurances shall be provided to the Arts District Arts District, and complete copies of any insurance policies obtained pursuant to this Agreement shall be provided to the Arts District if requested at any time.

16. Indemnification and General Liability

Artist shall defend, indemnify and hold harmless the Arts District, and its officers, employees, agents, contractors, consultants, volunteers and members of its boards, committees and commissions, the Property Owner of 454 W. 6th St, and the City of Los Angeles and its officers, employees, agents, contractors, consultants, and members of its boards, committees and commissions (all of whom shall be considered "Indemnified Persons"), harmless from and against any and all Losses arising directly or indirectly, in whole or in part, out of any injury to or death to any person or damage to or destruction of any property, from any cause whatsoever, relating to Artist's performance, attempted performance or failure to perform under this Agreement or breach of this Agreement, whether such Loss is caused by the Artist or its agents, employees or contractors, or by any third party.

In the event any action or proceeding is brought against an Indemnified Person by reason of a claim arising out of any Loss covered by this indemnity, and upon written notice from such Indemnified Person, Artist shall at the Artist's sole expense answer and otherwise defend such action or proceeding using counsel approved in writing by the Indemnified Person. Each Indemnified Person shall have the right to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment covered by the indemnity set forth in this Section.

For purposes of this Section, the term "Losses" shall mean any and all claims, demands, losses, damages, liens, liabilities, injuries, deaths, penalties, fines, lawsuits and other proceedings, judgments and awards rendered therein, and costs and expenses, including, but not limited to, reasonable attorney's fees.

The Artist shall indemnify and hold the Arts District, the Property Owner and the City of Los Angeles harmless from all loss and liability, including attorney's fees, court costs, and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark and all other intellectual property claims of any third party persons arising from the Artist's work under this Agreement.

17. Incidental and Consequential Damages

Artist shall be responsible for consequential damages for personal injury including death or tangible property damages due to the Artist's negligence or intentional acts. This Agreement shall not limit any cause of action arising between the parties, which are based upon wrongful acts which are independent of the Agreement.

18. Artist's Default; Remedies; Termination

18.1. Failure or refusal of the Artist to perform or do any act herein required shall constitute a default. In the event of a default, in addition to any other remedy available to the Arts District, this contract may be terminated by the Arts District upon five (5) day written notice. Such termination does not waive any other legal remedies available to the Arts District.

18.2. The Arts District may terminate this Agreement upon ten (10) days written notice to Artist.

18.3. Upon termination, the Arts District shall provide for payment to the Artist for services rendered and expenses incurred prior to the termination date. Artist shall receive payment only for expenses directly related to the current phase of the Project the time of termination. Such payment shall not exceed the amount of the interim payment for the current phase of the Project at the time of termination.

18.4. The remedies described herein are in addition to all other remedies available to either party under the laws of the State of California should the other party fail to comply with the terms of this Agreement.

A change in the designation of the person or address to which submittals, requests, notices and reports shall be delivered is effective when the other party has received notice of the change by certified mail.

The parties agree that any controversy or claim arising out of or relating to this Agreement or breach of this Agreement shall be settled by arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Arbitration shall be the exclusive forum for the resolution of any controversies, claims, or disputes arising out of or relating to this Agreement. Each party shall only have the authority to award traditional contract remedies, and any award shall not exceed the maximum value of this Agreement. Each party shall be solely and exclusively responsible for its cost of arbitrating any dispute, with the sole exception of the fee of the arbitrator, the record or transcript of the arbitration, and the cost of the facilities for the arbitration, which shall be borne equally by parties.

19. Ownership of Art Work; Copyright and Patents; Documentation

20.1. Generally. Artist shall retain all rights under the Copyright Act of 1976, 17 U.S.C. 101 et seq., and all other rights in and to the Art Work except as otherwise set forth in this Agreement. The Arts District and the City of LA are not responsible for any third party infringement of the Artist's copyrights and Artist agrees to hold the Arts District harmless for any such infringement.

20.2. Title and Risk of Loss. Title to the Art Work shall be held by the Arts District and the City of Los Angeles. The Artist bears the risk of damage to or loss of the Art Work prior to verification of completion by Arts District.

20.3. Display. The Arts District has the right to display the project drawings and models, and is authorized to make and reproduce photographs and other two-dimensional reproductions of any drawings or models for publicity and program purposes.

20.4. Ownership of Documents and Models. Studies, drawings, designs, maquettes and models prepared and submitted to the Arts District shall be returned to the Artist following Execution of the Art Work. Arts District may retain copies of these items for documentation purposes.

20.5. Reproduction Rights. Arts District shall have a perpetual, non-exclusive license to make, and to authorize the making of photographs and other two-dimensional reproductions of the Art Work for educational, public relations, arts promotional and other non-commercial and fundraising purposes. For the purposes of this Agreement, the following are deemed to be reproductions for fundraising and non-commercial purposes: reproduction of prints for sale, licensing of prints for sale, reproduction in exhibition catalogues, books, slides, photographs, postcards, posters and calendars, and the Arts District's on-line homepage; in art magazines, art books, and art and news sections of newspapers; in general books and magazines not primarily devoted to art but of an educational, historical or critical nature; slides and film strips not intended for a mass audience, and television from stations operated for educational purposes or on programs for educational purposes from all stations.

20.6. Artistic Credit. The Arts District hereby agrees to credit the Artist for the Art Work and his web site, upon publication of any two-dimensional reproductions of the work as stated in this Section.

Unless otherwise provided for herein, all Work Products originated and prepared by the Artist or its subcontractors of any tier under this Contract shall be and remain the exclusive property of the City of Los Angeles, Department of Cultural Affairs, for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. Artist hereby assigns, and agrees to assign, all

goodwill, copyright, trademarks, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by the Artist under this Contract. The Artist further agrees to execute any documents necessary for the City of LA to perfect, memorialize, or record the City of LA's ownership of rights provided herein.

20. Subcontracting

The Artist shall not subcontract this Agreement or any part of it unless such subcontracting is approved by the Arts District. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void. In the event Artist desires to subcontract for any of the services under this Agreement, the Artist shall notify the Arts District in writing and describe in detail the services to be provided by said subcontractor. Within ten (10) business days after receipt of Artist's notice of intent to subcontract, the Arts District shall notify Artist in writing of its consent to subcontract, which consent shall not be unreasonably withheld, as well as any insurance requirements the Arts District desires to impose on subcontractor activities.

The Artist's agreements with its subcontractors shall require that the subcontractors comply with each of the Artist's legal obligations to the Arts District as set forth in this Agreement.

21. No Assignment or Transfer

Artist shall consistently give its personal attention to the faithful execution of the scope of work of this Agreement. The Artist shall keep the work under its control and shall not assign or subcontract the whole or any part thereof, except as herein provided. All transactions with subcontractors shall be made through the Artist, and no subcontractor shall relieve the Artist of any of the Artist's liability or obligations under this contract.

22. Compliance with Laws

In the performance of this contract, Artist agrees to comply with applicable laws and regulations. Artist covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of Artist by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the services contracted for under this Agreement. All work performed by Artist under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals. Artist shall not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, sexual orientation, ancestry, age, sex, or disability.

23. Conflicts of Interest

Artist covenants and declares that, other than this Agreement, it has no business holdings or agreements with any official, employee or other representative of the Arts District. For the duration of this Agreement, in the event the Artist or its principals, agents or employees acquire such a holding, interest or agreement within the City of Los Angeles or with any official, employee or representative of the Arts District in the future, the Artist will immediately notify the Arts District of such holding, interest or agreement in writing.

24. Business License

Prior to commencement of the services to be provided hereunder, Artist shall apply to the City of Los Angeles for a business license, pay the applicable business license tax and maintain said business license during the term of this Agreement.

25. Miscellaneous

26.1. Survival of Indemnities and Other Provisions. Termination of this Agreement shall not affect the Arts District's right to enforce any and all indemnities, representations or warranties given or made by Artist to the Arts District under this Agreement, nor shall it affect any other provision of this Agreement that expressly states it shall survive termination.

26.2. Force Majeure. The term "Force Majeure" with respect to a delay in performance shall mean any delay that is attributable to: (1) any strike, lockout or other labor or industrial disturbance (whether or not on the part of the employees of either party thereto), civil disturbance, future order claiming jurisdiction, act of the public enemy, war, riot, sabotage, blockade, embargo, inability to secure customary materials, supplies or labor through ordinary sources by reason of regulation or order of any government or regulatory body; (2) any changes in any applicable laws or the interpretation thereof; or (3) any flood, washout, explosion, or any other cause beyond the reasonable control of the party from whom performance is required, or any of its contractors or other representatives. Any prevention, delay or stoppage in a party's performance hereunder due to Force Majeure shall excuse the performance of the party affected for a period of time equal to any such prevention, delay or stoppage; provided, however, that during the period of any such delay or stoppage, the party whose performance hereunder is excused shall take all reasonable steps necessary to minimize the length of such delay or stoppage.

26.3. Governing Law. This Agreement, regardless of where executed or performed, shall be governed by and construed in accordance with the laws of the State of California. The prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which the party may be entitled.

26.4. Successors and Assigns. The terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of Artist and the Arts District and, except as otherwise provided herein, their personal representatives and successors and assigns. There are no third-party beneficiaries to this Agreement.

26.5. Integrated Agreement; Modification. This Agreement contains all the agreements of the parties hereto relating to the subject matter addressed herein, and cannot be amended or modified except by a written agreement mutually executed between each of the parties hereto.

26.6. Non-waiver of Rights. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

26.7. Entire Agreement; Construction and Interpretation of Agreement.

(a) The parties intend that this Agreement (including all of the attached exhibits, which are made a part of this Agreement) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings.

(b) Should any provisions or portions of this Agreement be held unenforceable or invalid, the remaining provisions and portions shall be unaffected by such holdings.

(c) The subject headings of the paragraphs of this Agreement are for convenience only and shall not affect the construction or interpretation of any of its provisions.

(d) The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Agreement.

(e) This Agreement may be executed in two or more counterparts, each of which shall be deemed original, but all of which taken together shall constitute one and the same instrument.

(f) If more than one person executes this Agreement on behalf of "Artist", the obligations and liabilities of each such person shall be joint and several as to all obligations and liabilities of Artist hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year indicated below, effective as of the day the Project Manager executes the Agreement on behalf of the Arts District.

APPROVED AS TO FORM:

SAN PEDRO WATERFRONT ARTS DISTRICT

Dated: _____, 2016 _____
[PROJECT MANAGER NAME]

ARTIST

Dated: _____, 2016 _____
[ARTIST NAME]

EXHIBITS:

EXHIBIT A - Artist Proposal Submitted for Selection Panel Review and Final Rendering

EXHIBIT B – Project Location Map

EXHIBIT C – Project Time Line

EXHIBIT D – Project Budget

EXHIBIT E – Insurance Specifications

EXHIBIT F – Subcontractor Contract and Business License

EXHIBIT E

INSURANCE CONTRACTUAL REQUIREMENTS FOR THE CITY OF LOS ANGELES AND THE ARTS DISTRICT

ARTIST AGREES THAT:

1. Additional Insured/Loss Payee. The City of Los Angeles, the Arts District and the Property Owner must be included as an Additional Insured in applicable liability policies to cover the CITY's liability arising out of the acts or omissions of the named insured. The City of Los Angeles is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY of LA has an interest, e.g., as a lien holder.

2. Notice of Cancellation. All required insurance will be maintained in full force for the duration of its business with the City of Los Angeles and the Arts District. All required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY of LA and the Arts District if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.

3. Primary Coverage. Artist will provide coverage that is primary with respect to any insurance or self-insurance of the CITY of LA and the Arts District. The CITY of LA's program shall be excess of this insurance and non-contributing.

4. Modification of Coverage. The CITY of LA and the Arts District reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving the Artist ninety (90) days' advance written notice of such change.

5. Failure to Procure Insurance. All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management and the Arts District prior to the inception of any operations by the Artist.

Artists' failure to procure or maintain required insurance or a self-insurance program during the entire term of this Contract shall constitute a material breach of this Contract under which the Arts District and the City of LA may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the City of LA's and the Arts District's interests and pay any and all premiums in connection therewith and recover all monies so paid from Artist.

6. Workers' Compensation. By signing this Contract, Artist hereby certifies it is aware of the provisions of Section 3700 et seq., of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all time during the performance of the work pursuant to this Contract. This does not apply to Independent Contractors.

7. California Licensee. All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to the City of LA and the Arts District. Non-admitted coverage must contain a **Service of Suit** clause in which the underwriters agree to submit as necessary to the jurisdiction of a California court in the event of a coverage dispute. Service of process for this purpose must be allowed upon an agent in California designated by the insurer or upon the California Insurance Commissioner.

8. Aggregate Limits/Impairment. If any of the required insurance coverages contain annual aggregate limits the Artist must give the City of LA and the Arts District written notice of any pending claim or lawsuit which will materially diminish the aggregate within thirty (30) days of knowledge of same. You must take appropriate steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days of knowledge of same. The City of LA and the Arts District

has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect the City of LA's and the Arts District's protection are allowed without the City of LA's and the Arts District's prior written consent.

9. Commencement of Work. For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-4, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.